

# **STATE PROPERTIES COMMITTEE**

## **SPECIAL MEETING**

**FRIDAY, JANUARY 26, 2007**

A special meeting of the State Properties Committee was called to order at

9:05 a.m. by Chairman Kevin M. Flynn. Other members present were Mr. Robert Griffith, representing the Rhode Island Department of Administration, Richard B. Woolley, representing the Rhode Island Department of Attorney General and Robert W. Kay, Public Member. Also in attendance were John Ryan from the Rhode Island Department of Administration; Michael Mitchell and Michael Hebert from the Rhode Island Department of Transportation; Robert C. Bromley from the Rhode Island Senate Fiscal Office; Thomas Moses from Moses • Afonso • Jackvony, Ltd. and Kelly Coates from Carpionato Properties, Inc. .

Chairman Flynn noted for the record that the State Properties Committee did have a quorum present.

ITEM A – Department of Transportation – A request was made for approval of and signatures on the final documents for the sale of property known as the Farmer's Market in the City of Providence to Carpionato Properties. Mr. Mitchell explained that the Purchase and Sale Agreement concerning the subject property was previously approved by the State Properties Committee. Mr. Mitchell indicated that the Department of Transportation has appeared before the State Properties Committee on two previous occasions regarding the approval of easements for Amtrak to remove a blanket easement over

the entire parcel and to give Amtrak more limited easements for a railroad line. Mr. Mitchell explained the specifics of the subject property to the State Properties Committee using a site map. Mr. Mitchell explained, which parcels of land will be sold to Carpionato Properties and which parcels of land the State of Rhode Island will retain. Mr. Mitchell gave a detailed description of the easements. Mr. Mitchell indicated that the Department of Transportation is also seeking approval of an easement relative to a spur track, which consists of 1,200 square feet to the Providence and Worcester Railroad. Chairman Flynn asked if the spur track is being used. Mr. Mitchell indicated the spur track is being used, but he is uncertain as to how often it is used. Mr. Griffith clarified that the spur track is referred to as the third track. Mr. Mitchell indicated the spur track is located immediately adjacent to the west side of the Amtrak Railroad Line. Mr. Mitchell also indicated that there is a separate parcel of land, which the State of Rhode Island acquired from Amtrak located in the center of the Dean Street portion of the property, which services the Providence Journal print plant. Mr. Mitchell stated that there is no agreement between the State of Rhode Island and the Providence and Worcester Railroad relative to said spur track. However, once Carpionato Properties acquires title to the subject property, it will grant that easement to Providence Worcester Railroad in exchange for a blanket easement. Mr. Mitchell indicated that the final documents also include an Escrow Agreement for an easement, which has not yet been executed by Providence and Worcester Railroad. Mr. Mitchell indicated that he anticipates the document will

be signed in the very near futures. The Escrow Agreement allows the parties to close on the sale of the property; however, both the funds and the deed package will be held in escrow until said document is signed. Once the document is executed, all documents will be recorded in totality in the proper sequence by the closing attorney. Mr. Mitchell indicated the package contains a Memorandum of Understanding between Carpionato Properties and the State of Rhode Island, which requires any redesign or rehabilitation of the Farmer's Market Building be approved by the Rhode Island Historical Preservation & Heritage Commission. The Memorandum of Understanding will be recorded with the deed surviving the closing provisions in the Purchase and Sale Agreement regarding the preservation of said building. Mr. Mitchell indicated that Mr. Woolley expressed some concerns relative to the entities named in the Escrow Agreement. At the present time, the Escrow Agreement is by and between the State of Rhode Island and Carpionato Properties. However, the agreement will be amended to include Shops at Providence Place LLC, as a party to the Escrow Agreement as well. As the Purchase and Sale Agreement is between Carpionato Properties or its Nominee, Mr. Woolley asked Attorney Moses to clarify for the record the relationship between Carpionato Properties and Shops at Providence Place LLC. Attorney Moses explained that Shops at Providence Place LLC is a single purpose real estate holding entity, which was created by Carpionato Properties. Attorney Moses indicated that Shops at Providence Place LLC has the exact same membership interest and a disclosure form

has been provided to the State of Rhode Island as required when submitting a nominee. Mr. Woolley indicated that paragraph five (5) of the Memorandum of Understanding appears to give Shops at Providence Place LLC unfettered discretion relative to the use of the Farmer's' Market Building, which is to be preserved. It is Mr. Woolley's understanding that the intent of the parties is that any potential change in the development proposal for said building will require the approval of the State of Rhode Island Historic Preservation & Heritage Officer. Mr. Moses indicated that is the intent of the parties and said provision was taken directly from the Purchase and Sale Agreement, which was previously approved by the State Properties Committee. Mr. Mitchell added that paragraphs A and B were taken from the Memorandum of Understanding between the Department of Transportation, the Federal Highway Administration and the Historic Preservation & Heritage Commission.

Chairman Flynn clarified that paragraph C does not obviate the necessity for approval by the Historic Preservation & Heritage Officer relative to any potential change in the development proposal for said building. Attorney Moses indicated paragraph C does not obviate the Historic Preservation & Heritage Officer's approval. Paragraph C simply creates a standard whereby Carpionato Properties can amend the project plan subject to market conditions. Mr. Woolley indicated that the term "subject to market conditions" concerns him. Mr. Woolley asked Mr. Moses to explain what "market conditions" contemplates in terms of revision to the development plan. Mr. Woolley asked if said term contemplates any potential demolition of

the Farmer's Market Building. Attorney Moses stated that the term "subject to market conditions" refers to the building's use. Attorney Moses indicated that the original approved development plan was for a one hundred (100%) percent retail complex; much like Faneuil Hall in Boston. However, due to the costs to develop that plan, it may become necessary for Carpionato Properties to make amendments to the plan and the term "subject to market conditions" allows for said amendments. Mr. Woolley clarified that Carpionato Properties will still be required to consult with the Historic Preservation & Heritage Commission relative to any amendments. Attorney Moses indicated that is correct. Chairman Flynn asked Mr. Coates of Carpionato Properties if he wished to add anything. Mr. Coates indicated that the language contained in the Memorandum of Understanding addresses the fact that there is a standard for the Rhode Island Historical Preservation & Heritage Commission to review the project plans. Chairman Flynn asked if the Historic Commission of the City of Providence has any jurisdiction relative to this property. Mr. Coates explained that this project is very similar to the School for Boys at Sockanosett. The City of Cranston did not have jurisdiction over the project; however, the City of Cranston Planning Commission certainly had input relative to the project plan. The Rhode Island Historical Preservation & Heritage Commission considered the City of Cranston's input carefully. Mr. Moses indicated that he has discussed the permitting process relative to this project with Mr. Thomas Deller, Director of Planning and Development of the City of Providence. Attorney Moses explained that once the subject property

is no longer on the State of Rhode Island's tax roll, it becomes subject to the City of Providence's zoning and planning requirements.

As the property is in excess of 40,000 feet of land, Carpionato Properties is required to go through the City of Providence Planning Commission. Attorney Moses noted there will be substantial regulatory review of this project. Chairman Flynn asked what the estimated timeframe is regarding this project. Mr. Coates indicated that Carpionato Properties would like to begin the project as soon as possible; however, there will be some delay due to roadway reconstruction and environmental cleanup issues. Chairman Flynn asked Mr. Woolley if he was given enough time to review all the documents and if he was comfortable with the same. Mr. Woolley indicated he was comfortable with the documents as to form and that all concerns have been addressed to his satisfaction. Mr. Kay asked if the parties will appear before the State Properties Committee for final approval of the outstanding easement. Mr. Mitchell indicated that the parties are seeking approval of the easement and the only outstanding issue is the name change of the signatory to the Escrow Agreement. Mr. Woolley asked if the State Properties Committee could sign the documents subject to the substitution of the signature page. Mr. Woolley also indicated that conflict of interest disclosure statements must be filed by State employees involved in the negotiations of this sale. Mr. Mitchell apologized and indicated he did not have the conflict of interest disclosure statements executed at this time. However, he will have said forms executed immediately by the appropriate parties. Mr. Griffith suggested that the State

Properties Committee could approve the documents subject to the revision of the Escrow Agreement and the execution of the conflict of interest disclosure statements. Attorney Moses suggested that approval be worded such that the documents will not be released from escrow until such time as the ethics forms have been submitted as part of the record and the Escrow Agreement has been duly amended to include Shops at Providence Place LLC. Mr. Kay suggested that all the documents should be executed and submitted prior to the State Properties Committee granting final approval. As the State Properties Committee previously required that said closing be accomplished prior to January 28, 2007, Mr. Mitchell indicated that the parties planned to close on the sale of the property this afternoon. Mr. Mitchell indicated that the closing needs to be accomplished today in order to place the documents in escrow to satisfy said requirement. Mr. Woolley suggested that documents be approved on an individual basis rather than as a package. As the Quit Claim Deeds refer to several exhibits, they can be approved separately, but would encompass the attachments. Mr. Mitchell explained that a number of the attachments have previously been approved by the State Properties Committee. The Executive Secretary of the State Properties Committee has the original documents, which need to be recorded today. A motion was made to approve the Assignment Agreement between Carpionato Properties and Shops at Providence Place LLC subject to the conflict of interest disclosure statements being executed and submitted to the State Properties Committee and the Escrow Agreement being revised as discussed by Mr. Woolley

and seconded by Mr. Griffith. Mr. Kay opposed the motion to approve.

### **Three Votes Aye**

### **One Abstention**

In view of Mr. Kay's opposition to the motion to approve, Chairman Flynn asked whether Mr. Kay would like to further discuss the request. Mr. Kay recommended that the State Properties Committee withhold final approval until all outstanding documents are executed and submitted to the Committee. Chairman Flynn indicated that the State Properties Committee previously imposed a deadline of January 28, 2007, relative to the closing on the sale of the property. Mr. Griffith stated that the parties appeared before the State Properties Committee and requested a sixty (60) day extension of time to accomplish a closing of the property; however, the Committee granted an extension of only thirty (30) days. Attorney Moses stated that the only outstanding issues are title issues created by the Conrail Amtrak demise. Providence and Worcester Railroad holds the Conrail rights, which blanket the entire property. Attorney Moses indicated the parties could not control the timeframe in which the easement is executed. However, Providence and Worcester Railroad has promised the document will be executed within thirty (30) days. Mr. Kay indicated that pursuant to the State Properties Committee minutes of the December 12, 2006, former Chairman Williams stated that "the State of Rhode Island continues to be liable for this property and he is not in favor of granting an extension until February 28, 2007." Attorney Moses indicated that as Mr. Williams is now the



Director of the Department of Administration, he executed all documents. Director Williams is also fully aware of what the parties are requesting and has participated in discussions and agreed to close in escrow. Mr. Moses clarified that he is not speaking on Director Williams' behalf, but would assume his actions speak on his behalf. Chairman Flynn confirmed that he spoke to Director Williams this morning and verified that he is comfortable with the approval of the closing documents. Mr. Griffith indicated that Director Williams, as well as the other members of the State Properties Committee, have long been concerned with the issue of maintaining nuisances amongst the State of Rhode Island's holdings. Mr. Griffith indicated the intent of this Committee is to move the sale of this property along as quickly as possible and to communicate to Amtrak that the State Properties Committee is losing its patience relative to the delay in the execution of the appropriate documents. Mr. Woolley reiterated that his only concern relative to the Escrow Agreement is that it accurately reflects that the Shops at Providence Place LLC will be the recipient of the proceeds relative to this transfer. Mr. Coates indicated that he is hopeful the conflict of interest disclosure statements will be executed by the appropriate employees of the Department of Transportation. Mr. Coates indicated that Carpionato Properties has no employees, which serve on the Board of Directors of either Providence and Worcester Railroad or Amtrak. Therefore, Carpionato has no control over the execution of the outstanding documents. Mr. Coates explained that Carpionato Properties is willing to put up the \$4.5 million dollars today. Mr. Mitchell informed

the State Properties Committee that he has been primarily involved in this transaction since the negotiation of the Purchase and Sale Agreement. Mr. Mitchell represented to the State Properties Committee that he has no interest in either the subject property or any of Carpionato Properties entities. However, he has not yet executed a conflict of interest disclosure statement. Mr. Woolley indicated that said statements should be part of the record; however, he does not believe it should delay the closing of the sale of the property. Chairman Flynn asked if Mr. Mitchell could provide the executed conflict of interest disclosure statements to the State Properties Committee by the close of the business day. Mr. Mitchell indicated the executed conflict of interest disclosure statements could be provided to the Committee by the close of the business day. Mr. Woolley indicated that once Carpionato Properties assumed responsibility for the maintenance of the subject property, the State of Rhode Island is no longer at risk relative to future liability. Chairman Flynn reminded the State Properties Committee that the building is not secured at the present time. Homeless individuals seek shelter from the elements inside this structure. Chairman Flynn indicated that he consulted with Mr. Williams as to whether this request could be placed on the agenda of the next regularly scheduled meeting. Mr. Williams strongly suggested that due to the potential liability associated with this property, a special meeting be scheduled to expedite its transfer to Carpionato Properties. However, Chairman Flynn stated that the need for expediency should not pressure the State Properties Committee to approve a request with

which it is uncomfortable. Mr. Kay asked if he could amend his opposition to the motion to approve as he would prefer to abstain from voting relative to the approval of the documents. Therefore, Chairman Flynn asked that the record reflect that a motion to approve was made and seconded the vote was three votes to approve and one abstention.

A motion was made to approve the Quit Claim Deed transferring parcel 1 from the State of Rhode Island to the Shops of Providence LLC inclusive of the documents incorporated by reference therein subject to the conflict of interest disclosure statements being submitted to the State Properties Committee and the revision of the Escrow Agreement as discussed by Mr. Woolley and seconded by Mr. Griffith. Mr. Kay abstained from voting relative to this motion.

**Three Votes Aye**

**One Abstention**

A motion was made to approve the Quit Claim Deed transferring parcel 2 from the State of Rhode Island to the Shops of Providence LLC inclusive of the documents incorporated by reference therein subject to the conflict of interest disclosure statements being submitted to the State Properties Committee and the revision of the Escrow Agreement as discussed by Mr. Woolley and seconded by Mr. Griffith. Mr. Kay abstained from voting relative to this motion.

**Three Votes Aye**

**One Abstention**

A motion was made to approve the Perpetual Easement from the State of Rhode Island/ Department of Transportation to Providence

**and Worcester Railroad subject to the conflict of interest disclosure statement being submitted to the State Properties Committee and the revision of the Escrow Agreement as discussed by Mr. Woolley and seconded by Mr. Griffith. Mr. Kay abstained from voting relative to this motion.**

**Three Votes Aye**

**One Abstention**

**A motion was made to approve the Memorandum of Understanding between the State of Rhode Island/Department of Transportation and Carpionato Properties, Inc. and Shops at Providence Place LLC subject to the conflict of interest disclosure statements being submitted to the State Properties Committee and revision of the Escrow Agreement as discussed, and subject to the commitments made on the record by the parties with respect to the approval of the Historic Preservation & Heritage Officer concerning any potential change in the development proposal plan relative to the Farmer's Market Building by Mr. Woolley and seconded by Mr. Griffith. Mr. Kay abstained from voting relative to this motion.**

**Three Votes Aye**

**One Abstention**

**A motion was made to approve the Perpetual Maintenance Easement from Shops at Providence Place LLC to the State of Rhode Island/Department of Transportation subject to the conflict of interest disclosure statements being submitted to the State Properties Committee and the revision of the Escrow Agreement as discussed**

by Mr. Woolley and seconded by Mr. Griffith. Mr. Kay abstained from voting relative to this motion.

**Three Votes Aye**

**One Abstention**

A motion was made to approve the Perpetual Exclusive Surface Easement from the State of Rhode Island/Department of Transportation to Shops at Providence Place LLC to subject to the conflict of interest disclosure statement being submitted to the State Properties Committee and the revision of the Escrow Agreement as discussed by Mr. Woolley and seconded by Mr. Griffith. Mr. Kay abstained from voting relative to this motion.

**Three Votes Aye**

**One Abstention**

Mr. Woolley asked to review the Escrow Agreement. Mr. Woolley asked if the Escrow Agreement provides that the State of Rhode Island does not receive the revenue from the sale of the subject property until such time as the Providence and Worcester Railroad Easement Agreement has been executed together with the termination. Mr. Woolley asked if said funds will be placed in an interest bearing account for the benefit of the State of Rhode Island. Attorney Moses indicated that the funds are released when the title is clear. Therefore, the interest will accrue to the benefit of the buyer and not the seller because the seller has not presented clear title. Mr. Woolley asked who assumes responsibility for the subject property until the Providence and Worcester Railroad executes the easement and termination agreement. Mr. Moses stated he was hopeful that the

Providence and Worcester Railroad would execute all documents by some time next week. Mr. Woolley clarified that granting approval of the documents today will not relieve the State of Rhode Island of any future liability associated with the subject property. Mr. Moses explained that he spoke to counsel for Providence and Worcester Railroad who indicated all the documents should be executed by early next week. However, she could not commit to a definite date. Mr. Woolley stated that the Committee's purpose in moving the request for approval of the documents forward was so the State of Rhode Island would benefit from the proceeds of the sale. It was Mr. Woolley's understanding that the State Properties Committee scheduled this special meeting so that the closing could be accomplished today and the State would be released from any future liability associated with the subject property. Mr. Moses indicated the theory is such that if the documents are executed on Monday, the State of Rhode Island will receive the funds on Monday. Mr. Moses indicated that the Escrow Agreement terminates if the transfer is not complete within thirty (30) days if the transfer is not complete. Mr. Woolley clarified that the State of Rhode Island is still responsible for any liability associated with this property for that thirty (30) day period. Mr. Moses stated that Providence and Worcester Railroad would need approximately one (1) week to execute the documents. Chairman Flynn asked how long Providence and Worcester Railroad has been in possession of the escrow documents. Mr. Moses indicated it received the Amtrak easement yesterday. The Carpionato Properties easement relative to the Providence Journal spur and the

additional spurs heading toward Dean Street were provided nearly two months ago. Mr. Moses also indicated that the Providence and Worcester Railroad is required to obtain Board approval and when dealing with a public company these types of issues take time. Mr. Mitchell also indicated that whether the Committee approves the documents today or grants a one week extension, until the documents are executed the end result is essentially the same. Mr. Moses stated that the way in which the transfer is structured; the title company will already have the funds in hand and will wire the same to the State of Rhode Island. Mr. Woolley inquired about paragraph which grants a sixty (60) day extension of time. Mr. Moses indicated that Carpionato Properties, Inc. was to obtain clear title to the property, which it does not have until the Providence and Worcester Railroad execute the necessary documents. Mr. Woolley reiterated that he is simply concerned by the delay. Mr. Moses promised to notice the State Properties Committee as soon as the State of Rhode Island is no longer at risk relative to the subject property. Chairman Flynn welcomed any suggestions as to how the Committee could expedite this matter. Mr. Moses indicated Providence and Worcester Railroad has been responsive relative to the execution of the documents; however, a telephone call from the Director of the Department of Transportation may be helpful in expediting the matter.

Mr. Moses did not want to categorize Providence and Worcester Railroad as being recalcitrant as it is willing to execute the documents but obtaining the necessary approvals takes time. Mr. Woolley asked what the cause of the delay is. Mr. Moses stated that

Providence and Worcester Railroad's in-house counsel was on vacation for a period of time. When in-house counsel returned, she indicated there were more pressing issues, which needed her attention prior to the execution of these documents. Mr. Woolley asked if the only delay is the signing off of Providence and Worcester Railroad's Legal Department. Mr. Moses indicated that there are no other issues. However, Providence and Worcester Railroad will not allow Carpionato Properties to file the termination of its rights until the easement is satisfied. Mr. Griffith agreed that it may be helpful if the Director of the Department of Transportation contacted Providence and Worcester Railroad relative to the execution of the of the outstanding document. Mr. Mitchell indicated that he will immediately approach the Director of the Department of Transportation relative to the Committee's suggestion. Mr. Griffith also indicated that the Committee will contact the Director of the Department of Administration to request her assistance relative to the Providence and Worcester Railroad's execution of the document forthwith. Mr. Griffith also expressed his concern regarding the liability associated with this building. Mr. Griffith indicated that as the outdoor temperature plummets, homeless individuals are seeking shelter from the elements inside the Farmer's Market Building which increases the State of Rhode Island's potential for liability. Mr. Griffith indicated that the State of Rhode Island must use any means to increase its efforts to secure this area. However, notwithstanding said concerns, Mr. Griffith made a motion to approve the Escrow Agreement subject to the conflict of interest disclosure statements



**being submitted to the State Properties Committee and the revision of the Escrow Agreement as discussed and seconded by Mr. Woolley.**

**In view of Mr. Kay's decision to abstain from voting relative to the previous documents, he inquired whether he is permitted to vote to approve the Escrow Agreement. The other members of the State Properties Committee were not aware of any reason Mr. Kay should be prohibited from voting in favor of the motion to approve the Escrow Agreement.**

**Passed Unanimously**

**There being no further business to come before the State Properties Committee, the meeting was adjourned at 11:01 a.m. Mr. Griffith made a motion to adjourn, which was seconded by Woolley.**

**Passed Unanimously**

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**Holly H. Rhodes, Executive Secretary**